

DATE: August 5, 2004
Docket No. C2003-06

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Appeal of Amica Mutual Insurance Company

Decision and Order

I. Introduction

Amica Mutual Insurance Company (“Amica”) appeals to the Commissioner of Insurance (“Commissioner”) from a decision of the Commonwealth Automobile Reinsurers (“CAR”) Governing Committee Review Panel (“Governing Committee”), which required Amica to provide service to a new office location of the A-Affordable Insurance Agency, Inc. (“A-Affordable”) in Brockton. A-Affordable, an Exclusive Representative Producer (“ERP”) appointed to Amica, has multiple offices, including an office in Brockton.¹ After A-Affordable acquired a lease for a second office location in Brockton from an ERP that had been terminated, Amica opposed servicing the second office location. The appeal is filed pursuant to Rule 20 of the CAR Rules of Operation (“CAR Rules”). I was designated as the presiding officer of this matter. Amica was represented by Edward J. Donahue, Esq.; and CAR was represented by Robert W. Mahoney, Esq., and Suwha Hong, Esq.

¹ At the time of this appeal, an ERP was defined as an insurance producer who meets standards established by CAR and does not have a voluntary contract with an insurer which writes motor vehicle insurance in Massachusetts. Each ERP is assigned to a servicing carrier.

II. Background & Procedural History

a. The Business Purchased by A-Affordable -- The Peoples Insurance Agency

This dispute arose as a result of A-Affordable's purchase of the People's Insurance Agency ("Peoples"), including its book of business and lease for an insurance sales office located at 486 Forest Avenue, Brockton, Massachusetts, herein after "Brockton office".

Peoples' ERP appointment was terminated for cause by its servicing carrier, Arbella Mutual Insurance Company ("Arbella"), on the basis of an improper affiliation between Peoples and a voluntary agency, the Smith, Buckley, and Hunt Insurance Agency, Inc.² Peoples appealed its ERP appointment termination to the CAR Market Review Committee ("M.R. Committee"), which, on September 17, 2002, voted to uphold the appointment termination and deny Peoples' request for reinstatement. Before adjournment of the meeting, Peoples requested that non-renewal processing not be initiated and that the agency be allowed to write new business, pending further review by the CAR Governing Committee. The M.R. Committee voted to "grant a stay for the issuance of non-renewals by Arbella, pending a review of the Market Review Committee decision, but denied the agency the authority to write new business." *Records of Meeting of M.R. Committee* (September 17, 2002) at 5. Before the Governing Committee reviewed Peoples' appeal, however, Peoples entered into a Purchase and Sale Agreement to transfer, among other things, its book of business and the lease for its Brockton office to A-Affordable.³ The Purchase and Sale Agreement disclosed to the buyer that Arbella had terminated Peoples' ERP appointment, and that an appeal of the M.R. Committee's decision to uphold the termination was pending before the Governing Committee. *Amica Response*, Exhibit E at 19. The Purchase and Sale Agreement also provided that "approval of the transaction by [CAR] and . . . all appeal periods following such approval to have expired . . . or no right of further appeal remaining" was one of the conditions precedent to close the transaction.⁴

² At the time of this appeal, certain affiliations were impermissible under CAR Rule 14.A.2.b.

³ The records of the Governing Committee show that it postponed its review of the M.R. Committee decision on February 25, 2003, April 3, 2003, and June 18, 2003, at the request of the interested parties.

⁴ At the April 10, 2003 M.R. Committee hearing, David Bakst, counsel for Peoples, stated that it was his understanding at the time of the sale that as long as the appeal process at CAR was ongoing, and because Arbella was willing to continue to service the in force business, that there was still a viable insurance agency to sell. In addition, he stated Peoples "deferred the hearing at the Governing Committee . . . because we fully believed that the Market Review Committee would permit the sale to go through. So, it was very deliberate and based on the assumption that the agency was going to be sold." *Transcript of M.R. Committee Hearing* (April 10, 2003) at 21.

b. A-Affordable and its Servicing Carrier Amica

In January 2003, while review by the Governing Committee of Peoples' ERP appointment termination was still pending, Amica advised A-Affordable that it did not object to A-Affordable's purchase of Peoples' book of business, and that it did not object to servicing such business from A-Affordable's existing Brockton office at 480 Forest Avenue, which is close to the Peoples' Brockton office at 486 Forest Avenue.⁵ However, Amica informed A-Affordable that it would not service the location of the Peoples' office as an additional A-Affordable office because it did not believe that it was obligated to do so.

A-Affordable complained to CAR about Amica's refusal to service the former Peoples' Brockton office, and on March 4, 2003 and April 10, 2003, the M.R. Committee held a hearing on the issue. As reflected in the April 14, 2003 *M.R. Committee Decision Letter*, Amica argued at the M.R. Committee hearing that the Peoples' office location terminated along with its ERP appointment, and to allow A-Affordable to acquire that office location would undermine ERP compliance with the CAR Rules. A-Affordable argued that CAR has allowed other acquiring agencies to maintain the office of the seller, and that Peoples, the selling agency, had not exhausted its right of appeal at CAR and continued to provide service to its existing customers. The transcript reflects that some, but not all, of the members of the M.R. Committee believed that the failure of Peoples to have received an explicit stay of termination at the hearing on its termination was a technicality, and one member stated that it was promoting form over substance to not allow the agency to be sold to A-Affordable for its use as an ERP office location. *See Transcript of M.R. Committee Hearing (April 10, 2003) at 23-32.* The M.R. Committee subsequently voted in favor of A-Affordable's request that Amica be required to service the former Peoples' Brockton office. In addition, it voted to "allow A-Affordable's purchase of the selling agency and retention of the seller's Brockton office location." *April 14, 2003 M.R. Committee Decision Letter.* The M.R. Committee noted that Peoples had appealed its termination to the Governing Committee of CAR, where it was still pending, and that Peoples was allowed to service existing and renewal business during the pendency of its appeal. In addition, the M.R. Committee noted that over 1,000 insureds seek automobile insurance services

⁵ At the pre-hearing conference on October 21, 2003, one of the owners of A-Affordable, Mr. Mark Winiker, reported that the primary Brockton office location of A-Affordable was 480 Forest Avenue. No one disagreed.

at the former Peoples' Brockton office and that A-Affordable had indicated there were severe physical space restrictions at its existing Brockton location. Further, the M.R. Committee stated that it was aware of the proximity of the two locations.

On June 4, 2003, the Governing Committee affirmed the M.R. Committee's April 10th decision to "uphold [A-Affordable's] request and allow the purchase of [Peoples] and retention of the seller's office location, with the requirement that Amica service the additional location." *Records of Governing Committee Meeting* (June 4, 2003) at 5. In its decision letter dated June 9, the Governing Committee noted that A-Affordable had asserted that CAR has historically always allowed a terminated ERP to sell its assets, there were several years remaining on Peoples' lease and A-Affordable was willing to assume that as part of the purchase, and there was no specific language in the CAR Rules that prohibits an agency from opening an additional location in the same area.

On July 8, Amica filed this CAR Rule 20 appeal with the Commissioner. On July 25, I issued a preliminary order, requiring Amica to file a concise statement of the specific issues on appeal and related documents. On August 11, Amica filed a response to the preliminary order. On August 22, CAR submitted a response to Amica's submission. At the pre-hearing conference held September 17, Amica was ordered to file a clarification of the specific relief it sought from the Commissioner. In addition, Larry E. Smith and Mark Winiker were identified as owners of A-Affordable and the purchasers of Peoples, and it was agreed that they should receive notice of this proceeding. By letter dated September 17, I notified those individuals of this proceeding, and requested that they respond in writing by October 10, if they wished to participate in the proceeding. No response was filed. On October 14, Amica and CAR filed a joint statement of disputed issues. At a status conference on October 21, Mark Winiker and counsel for Peoples, David Bakst, Esq., were present, but stated that their intent was to observe, without participating in the proceeding. CAR and Amica filed supplementary briefs on October 31 and November 3, respectively. CAR and Amica filed discretionary reply briefs on November 12 and November 14, respectively. A hearing was held on November 18, and counsel for each party to this proceeding, as identified above, were in attendance, as well as CAR legal counsel Joseph Maher, Esq., Mr. Bakst and Mr. Winiker were also present. Oral argument was presented at the hearing

by Amica and CAR.

III. Issue in Dispute

The Joint Statement of Disputed Issues filed by the parties provides as follows:

The parties stipulate and agree that the only disputed issue in this proceeding is whether Amica is obligated to service A-Affordable's newly acquired book of business at the Peoples' location in view of the fact that the Market Review Committee sustained Arbella's termination of Peoples as an ERP to write new business with Peoples retaining its right to service its book of business and issue renewals until such time as the Governing Committee Review Panel ruled on Peoples' appeal contending that it is entitled to retain its ERP appointment, and the additional fact that before the Governing Committee Review Panel ruled on Peoples' appeal, Peoples and A-Affordable executed a Purchase and Sales Agreement pursuant to which Peoples' transferred, among other things, its book of business and its office lease to A-Affordable. *Joint Statement of Disputed Issues.*

IV. Arguments of the Parties

a. Amica

Amica argues that CAR's decision to require Amica to service the Brockton office that A-Affordable acquired from Peoples should be reversed because the CAR Rules at the time of this appeal, the Governing Committee's moratorium on ERP Expansion,⁶ and CAR's generally applied administrative procedures prevent a transfer of Peoples' terminated ERP appointment to a purchaser or acquirer. Amica argues that because Peoples' ERP appointment was terminated, its office location may not be transferred to a purchaser or acquirer. Accordingly, Amica specifically requests that the Commissioner disapprove CAR's ruling, and relieve Amica "from the obligation imposed by [CAR] to service the former [Peoples] office location at 486 Forest Avenue, Brockton, Massachusetts as an insurance sales office of A-Affordable." *Amica Statement of Specific Relief Sought.*

⁶ At the hearing, Mr. Maher provided the following background information about the "moratorium". He stated that the moratorium has been in place since the late 1990s, and it originally sought to prevent additional ERP appointments without a determination that they would serve market need. In addition, under the moratorium, an existing ERP can not open a new office in a community where ERPs and voluntary producers already exist, which have been viewed as sufficient to accommodate the risks in that territory. However, he stated that CAR views office acquisition resulting from an ERP to ERP sale differently because such a transaction does not increase the residual market presence or increase the overall burden on the servicing carriers.

Based on the belief that more locations equals more business volume, Amica asserted during the hearing at the Division that it does not want to assume or absorb the business of an additional location when it believes it is not required by the CAR Rules and CAR Plan of Operation to do so. Amica argues in its *Supplemental Brief* that CAR has long maintained a policy of prohibiting the transfer of terminated ERP appointments and office locations, but concedes that such policy may be insufficiently articulated in the CAR Rules and records. However, Amica asserts that the common understanding is that an agency is not a viable ongoing operation as far as the ability to fully perform as an ERP once it is terminated. Amica, therefore, argues that at the time of A-Affordable's acquisition of Peoples, Peoples had no market outlet which would allow it to transfer its office location, *i.e.*, it had no voluntary contracts with any automobile insurer and its ERP appointment had been terminated. In addition, Amica asserts that G.L. c. 175, § 163, the statute governing insurance agents in effect at the time Peoples' ERP appointment was terminated, required licensed agents to be appointed by an insurance carrier, or otherwise a brokerage relationship existed at best. Thus, Amica asserts that no acquisition of any agency or its location can occur because Peoples had no agency appointments to any automobile carrier.

Amica also argues that Peoples is not an agency within the meaning of CAR Rule 14 that can be acquired as an ERP location. Amica argues that CAR Rule 14 allows, at the time of this appeal, only for the "inurement" of an existing ERP appointment in the event an ERP's book of business or share of stock are sold to a qualified buyer, but in this case, Peoples' appointment was terminated.⁷

⁷ At the time of this appeal, CAR Rule 14.A.2.d. stated as follows:

If an agent or broker which has an Exclusive Representative Producer appointment to a Servicing Carrier sells its stock or its book of business to a producer which does not have a motor vehicle insurance relationship with a Servicing Carrier, such appointment will inure to the purchaser subject to the eligibility requirements and production and market need criteria of this Rule, notwithstanding the location of the seller's place of business. If the Exclusive Representative Producer appointment was in a probationary status, as respects the above requirements or criteria, that status will carry over to the purchaser of this business.

If the sale does not result in the continuation of the appointment to the sellers' Servicing Carrier, then that Servicing Carrier shall enter an agreement with the purchaser whereby all risks written by the Servicing Carrier on behalf of the seller, for policies with an effective date as of 90 days subsequent to the date of the sale for renewal business and as of the date of sale for new business, will be fully serviced through the purchaser until the policy expiration date of each risk, as noted on the declaration page of each policy in force as of these respective dates.

Servicing shall include, but not be limited to, change of existing vehicles, adding insureds, adding named operators onto the existing policy, endorsing coverage limits, providing all notices required by law, claims processing and premium collection. All other obligations of both Servicing Carrier and producer as set forth pursuant to the Plan and Rules of Operation shall remain in force during the term of this agreement.

Amica admits that in other cases ERPs have requested CAR to delay the effective date of an appointment termination to allow for time to sell their agency, and presumably location, but it asserts that if CAR does not provide for delay, the ERP has no appointment or location to transfer.⁸ To demonstrate the common understanding among servicing carriers that terminated ERP appointments and office locations cannot be transferred, Amica emphasizes that CAR's legal counsel stated, among other things, to the M.R. Committee in this matter that "...Peoples' ... is terminated, therefore, it is not a viable ongoing operation with the meaning of CAR having an existing [ERP] opportunity." *Amica Supplemental Brief* at 2, quoting *Transcript of M.R. Committee Hearing* (April 10, 2003) at 17-18. In addition, Amica argues that CAR's legal counsel directed the M.R. Committee to specifically indicate if it intended to order Amica to service the former Peoples' Brockton office. Amica asserts that this implies the normal result in such a case is that a terminated ERP would not possess a location to service.⁹ Amica argues that the M.R. Committee's subsequent decision in this matter unreasonably deviated from commonly understood procedure, and its ruling is crafted to force Amica to service the Peoples' office without addressing the issue of whether there was a legitimate ERP office location to transfer. Amica argues that unjustified deviation from commonly understood CAR procedure cannot be tolerated if the residual market is to remain a credible component of the Massachusetts automobile insurance system. Additionally, Amica asserts that Peoples' ERP appointment termination was never reviewed by the Governing Committee, and any requests at this time by

⁸ Amica cites the following three cases to illustrate that in prior CAR cases ERPs have specifically requested delays in appointment terminations to allow for time to sell their agencies: Blake Insurance Agency (May 25, 2000) (the ERP was terminated by his servicing carrier because he did not have an active broker's license, and made an untimely request for review by CAR); Doc Va Vong (July 9, 1997) (after an ERP had a six-month probationary appointment period and after one postponed M.R. Committee hearing, the M.R. Committee denied the ERP's request for any further extension of his appointment termination); and GLK Insurance Agency (August 12, 1998) (an ERP appealing the termination of his appointment was allowed six months to sell his agency). In addition, to illustrate what elements of an agency operation are transferable, Amica references the matter of Dylan Cadwalder - McGowen Agency (November 2, 1995) (an ERP appointment could not inure through sale to an individual without an appointment because ownership did not pass prior to the ERP termination). See *Amica Supplemental Brief*, Exhibits A1-A4.

⁹ Amica references this statement by CAR's Counsel at the April 10, 2003 M.R. Committee hearing: "[A committee member] has pointed out there was a specific request by ... the Peoples' Insurance Agency for the ability to continue to service its existing book of business for a period of time, if this Committee felt that when it allowed that request and affirmed that motion [on September 17, 2002], that it intended to include in that the ability ...[for] Peoples' Insurance Agency be allowed to transfer its book of business and/or its office location to a [bona fide] purchaser, then the Committee in regard to that matter while not reconsidering the original matter could in regards to the matter pending before this committee today, ...could make a motion and act upon that motion to [wit] to provide that this agency would, should, have been allowed to transfer its book of business by sale to include its location." *Transcript of M. R. Committee Hearing* (April 10, 2003) at 36-37.

Peoples for additional time to sell its agency and for review by the Governing Committee are untimely.

Further, Amica asserts that the CAR cases involving the Shuman Insurance Agency (“Shuman”) and the Flanagan Insurance Agency (“Flanagan”), which CAR cites as precedent for allowing a terminated ERP to transfer its book of business and office location to another ERP, are not applicable to this matter. Amica states that in each of those cases the servicing carrier did not object to its ERP acquiring a new office location. Amica argues that this matter is distinguishable from the prior cases because in this case Amica challenged the acquisition of the office location before any “intermediate validation” by CAR occurred.

Amica argues that even assuming, *arguendo*, that CAR’s interpretation of its prior cases is correct, strong public policy and residual market management considerations give weight to Amica’s position in this case. Amica states that the CAR Rules, primarily CAR Rule 14, govern the responsibilities of ERPs and contain proscriptions of conduct. Amica points out that the sanction available to servicing carriers for an ERP’s violation of the CAR Rules is termination of the ERP relationship. Without such sanction, Amica argues, there is no real incentive for ERPs to follow the rules. Amica argues that the sanction of termination is weakened by allowing a terminated ERP to transfer after its termination all the benefits that it had possessed while it was a valid ERP. Amica asserts that the terms of the Purchase and Sale Agreement, which transferred the Peoples’ business to A-Affordable, call for the operation of the agency in substantially the same manner as Peoples. Amica argues, “to be able to sell guaranteed access to an automobile insurance market, or in this case an ERP location after violating the standards giving rise to that access is unfair to the servicing carrier and other ERPs who follow the rules and voluntary agents.” *Amica Discretionary Reply Brief* at 3. Amica argues further that terminated voluntary agents cannot transfer agency appointments, and to allow a terminated ERP to transfer its privileges makes a mockery of the CAR Rules and the system’s fairness.

b. CAR

CAR asserts that the record in this case and CAR precedent allow Peoples to transfer its Forest Avenue office location to A-Affordable. It argues that Amica has a responsibility as a servicing carrier to service this location, and Amica’s concern about the volume of new

involuntary business that will be generated is not a reason for it to refuse to service the location. It further argues that to allow Amica to refuse to service the involuntary business due to its concern of involuntary market losses would be inconsistent with CAR's responsibility to assure that motor vehicle insurance is available to all qualified risks.

CAR argues that the moratorium on ERP expansion which existed at the time of this appeal has no relevance in this case because this matter concerns an acquisition from an existing agency. CAR states that the "moratorium" only applies to the establishment of an additional ERP office, not acquisitions from existing agencies. *See supra* at n. 6. CAR asserts that the policy behind the ERP moratorium is to prevent ERPs from expanding without serving a market need. However, CAR argues, this is not a concern in the current case because the former Peoples' book of business meets a market need in the involuntary market. It points out that over 1,000 policies are written through the Peoples' location, exceeding the production criteria in CAR Rule 14D(1), which help determine market need.¹⁰

In addition, CAR asserts that the "inurement" language in CAR Rule 14.A.2.d., as it existed at the time of this appeal, does not apply to this matter. CAR states that CAR Rule 14.A.2.d. applies to cases in which a producer with an ERP appointment sells its book of business to a producer with no motor vehicle insurance relationship with a servicing carrier. CAR argues that it is irrelevant whether Peoples' appointment had been terminated or not because the purchaser, A-Affordable, has an ERP appointment.

CAR also argues that Peoples is an agency within the meaning of CAR Rule 14, as it existed at the time of this appeal, which could be acquired as an ERP location. It asserts that at the time of the transfer of assets to A-Affordable, Peoples was a valid and existing agency that continued to service its in force policies. CAR asserts that the M.R. Committee allowed Peoples to continue to service and renew in force policies, which in essence allowed Peoples to continue to operate as an agency. It argues that Amica is incorrect to say Peoples was not a viable agency, and its authority to place business was a brokerage relationship at best. Here, CAR

¹⁰ To support this proposition, CAR quotes a M.R. Committee member who, in commenting on a revised market need criteria proposal for CAR, stated "that minimum production requirements recommended in the proposal for each additional ERP location would help to determine when a market need is being met." *CAR Response*, Exhibit 6 (*Records of M.R. Committee* (5/27/1999) at 4). At the time of this appeal, CAR Rule 14.D.1. stated that an ERP must meet a production threshold of 100 exposures in the first year, 250 in the second year, and 400 in the third year and thereafter.

argues that Arbella was obligated to service the in force policies, and Peoples had specific authority resulting from the M.R. Committee vote to continue as an existing agency.

CAR also asserts that Amica mischaracterizes CAR's position and its legal counsel's position on whether Amica should service the former Peoples' location. CAR argues that the quotation Amica references of CAR's legal counsel, in which he stated that Peoples was not a viable operation, is applied out of context. Rather, CAR asserts, its legal counsel made this statement to advise the M.R. Committee that it could grant Peoples an opportunity to sell its assets, as the Committee had done in prior cases. *See supra* at n. 9. In addition, CAR points out that at the M.R. Committee meeting on April 10, 2003, a panel member noted that the omission of the stay of termination was an "extraordinary set of circumstances" that can be rectified, the Peoples' location serves 1,000 policyholders, and precedent existed for addressing market disruption. Thus, CAR argues that the M.R. Committee vote granted a retroactive stay, in substance amending the motion taken at the prior September 17, 2002 M.R. Committee meeting, by correcting what it perceived to be a technical distinction that it had not explicitly granted a stay of termination. CAR also asserts that the M.R. Committee needed to consider the issue at the April 10, 2003 M.R. Committee meeting because the transaction had not occurred before its September 17, 2002 hearing concerning termination of Peoples' appointment.

Further, CAR argues that CAR precedent allows a terminated ERP to transfer its book of business and office location to another ERP. CAR argues that this practice avoids market disruption and prevents a dislocation of the customers of the selling agent. CAR specifically refers to a prior CAR case involving the Flanagan agency and a case involving the Shuman agency.¹¹ CAR states that these cases are distinguishable from the instant case in a single respect: Flanagan specifically requested and received from CAR a 30-day postponement of the termination date; and Shuman, while its appeal was before the Division, specifically requested

¹¹ CAR states that in the Flanagan case, the M.R. Committee upheld Flanagan's ERP termination by Arbella, but allowed Flanagan to service its in force policies from its approved office locations. Flanagan was granted a 30-day stay of termination but was not allowed to write new business. During the 30-day stay, Flanagan sold its book of business to the Rapo and Jepson Insurance Agency, which had an ERP appointment with the Hanover Insurance Company. CAR states that in the Shuman case, after Shuman's ERP appointment was terminated, Shuman sold its business and all three of its office locations to the Levenbaum Insurance Agency, which had an ERP appointment with the Commerce Insurance Company. Levenbaum then sold its Revere book of business and location, consisting of 450 vehicles, to A-Affordable. CAR also notes that A-Affordable appealed Amica's refusal to service the office location in Revere, which it had acquired from Levenbaum, and CAR upheld A-Affordable's appeal and directed Amica to support A-Affordable's Revere office. *See CAR Response*, Exhibits 6-7.

and received from the Division's hearing officer a 30-day postponement of the termination. CAR acknowledges that Peoples did not specifically request a postponement of its termination date, but asserts that the distinction is irrelevant because the M.R. Committee later voted that A-Affordable should be allowed to purchase the Peoples' book of business, and its location. CAR also argues that in ERP to ERP sales, it is common for the seller's office to be transferred to the purchaser and serviced by the purchasing ERP's servicing Carrier, and cites four examples.¹²

Moreover, CAR argues that prohibiting A-Affordable from servicing Peoples' book of business from Peoples' office location will unfairly devalue the assets acquired by the Purchase and Sale Agreement. CAR states that it was necessary for Peoples to find a buyer who would assume the remaining term of its lease for the office space. At the hearing at the Division, CAR asserted that both the M.R. Committee and the Governing Committee were concerned about market disruption occurring due to the dislocation of the customers. CAR argues that in light of the fact that the book of business A-Affordable acquired from Peoples contains approximately 1,000 policies, it is reasonable to have A-Affordable service this large volume of policies from Peoples' former office, and not inconvenience these policyholders by requiring them to seek service from a different location. Underscoring this point, CAR notes that in another matter a Governing Committee member stated that to require policyholders who are currently serviced at one insurance agency office location to seek service from a different office location of the same insurance agency is a restriction that cannot be placed on customers.

V. Analysis

Amica seeks an order from the Commissioner that Amica is not required to service the new Brockton office of its ERP, A-Affordable. Amica is forthright: it does not want to assume the volume of business this new Brockton office will generate if it is not required to do so. Amica argues that because Peoples' ERP appointment was terminated, its office location may not be purchased and used as an ERP location by A-Affordable. A-Affordable's primary office location in Brockton and the office it acquired from Peoples are both located on Forest Avenue,

¹² The April 25, 2003 sale of Ramy Insurance Agency (Premier Insurance Co.) to SEA Insurance Agency (Massachusetts Homeland Insurance Co.); the July 1, 2003 sale of Norcia Insurance Agency (Commerce Insurance Co.) to Supino Insurance Agency (Commerce Insurance Co.); the August 18, 2003 sale of SEA Insurance Agency (Massachusetts Homeland Insurance Co.) to Quality Insurance Agency (Safety Insurance Co.); and the September

in close proximity. Although Amica does not refuse to service the 1,000 customers of the former Peoples agency, it requests that the customers go to A-Affordable's preexisting office nearby. Amica, however, does not make specific allegations that the improper affiliations which led to the termination of Peoples' ERP appointment have continued, or that A-Affordable has undertaken any other activity which violates CAR rules at its new Brockton office.

Amica's rationale for not servicing A-Affordable's new Brockton office fails. To the extent that Amica is arguing that the sale of Peoples' assets to A-Affordable is a violation of CAR's moratorium on ERP expansion at the time of this appeal, I am not persuaded. I find persuasive CAR's argument that the moratorium on ERP expansion does not apply to an acquisition such as that presented here. The distinction is rational because the overall number of ERP locations does not expand when an existing ERP office is purchased by another ERP. Thus, the overall burden on the residual market was unchanged by the sale of Peoples to A-Affordable, and the moratorium on ERP expansion was not violated.

Arbella's argument that Peoples was not an agency that could be acquired as an ERP location is also unpersuasive. Here, at the time that the Purchase and Sale Agreement was executed, Peoples continued to function as an existing agency, albeit with circumscribed authority to act as an ERP, pending review of its termination by the Governing Committee. In particular, the stay of non-renewal notifications obligated Peoples' servicing carrier, Arbella, to service Peoples' in force policies, and it allowed Peoples to service its book of business and issue renewals. *See* CAR Rule 13.b.3.h. as it existed at the time of this appeal (at the time a termination notice is issued, the Servicing Carrier will continue to service the ERP's in force business until all the policies have been legally cancelled or non-renewed).

Additionally, the M.R. Committee was best situated to craft the terms of Peoples' authority to do business at the time it sustained Peoples' termination, and it allowed Peoples to service its in force policies. The M.R. Committee should have known that it was not outside of the realm of possibility for an ERP appealing an appointment termination to sell its business and location, as had happened in other cases. Had the M.R. Committee desired to further circumscribe Peoples authority, it had the authority to do so. Although it is clear that Peoples did not explicitly request a stay of termination before it sold its business, some of the M.R.

5, 2003 sale of A Accurate Insurance Agency (Premier Insurance Co.) to Steffon, James & Finnegan (Premier Insurance Co.).

Committee perceived any such failure by Peoples as a “technicality” because Peoples had requested, and received, a stay of non-renewal notifications, pursuant to CAR Rule 13.b.3.h, as it existed at the time of this appeal.¹³ Ultimately, however, on April 10, 2003, the M.R. Committee granted Peoples a “retroactive stay of termination”, in an apparent attempt to clarify that Peoples had the authority to sell its ERP business as an ongoing business to A-Affordable. The Governing Committee then affirmed the April 10, 2003 action of the M.R. Committee on June 4, 2003.

Although the grant of a retroactive stay of termination by CAR may have been unusual procedure, I am not persuaded that CAR’s order to allow Peoples to sell its assets to A-Affordable, with the requirement that Amica service the former Peoples’ office location, is improper or inconsistent with prior CAR Rules and practices. Amica identifies no CAR rule at the time of this appeal that would have prevented an existing ERP from acquiring the former Peoples’ Brockton office. There was no inurement of the Peoples’ ERP appointment, within the meaning of CAR Rule 14.A.2.d, because A-Affordable had an ERP appointment at the time it purchased Peoples’ assets. Further, CAR and Amica have identified prior cases that show terminated ERPs have been allowed to sell their assets and office locations, pending a stay of termination. Here, a stay of non-renewals was granted, as well as a retroactive stay of termination.

Moreover, other circumstances support CAR’s determination that Amica should be required to service A-Affordable’s Brockton office, which it acquired from Peoples. Approximately 1,000 insureds obtain automobile insurance services at this Brockton office, representing a number of exposures which is greater than the minimum production criteria for an ERP. Peoples’ contractual agreement with A-Affordable allows Peoples’ assets, including its office lease, to be assumed by A-Affordable, but the agreement was conditional on CAR’s approval of the transaction. It is uncertain whether compelling these insureds to go to another office location in close proximity would lead to any notable disruption to the marketplace, or if such action would cause that book of business to decline in number. However, because of the volume of business and the fact that there are physical space restrictions at A-Affordable’s

¹³ If termination is upheld by the M.R. Committee, CAR Rule 13.b.3.h. required that the ERP request a stay of non-renewal notifications before adjournment of the meeting if it intends to seek Governing Committee review of the decision. The rule, however, does not expressly provide for a stay of termination.

preexisting Brockton location, I find it is reasonable to allow A-Affordable to utilize the former Peoples' Brockton office, in accordance with the CAR Rules, and all applicable laws.

Therefore, I am persuaded that CAR correctly required Amica to service A-Affordable's business at the office it acquired from the former Peoples, located at 486 Forest Avenue, Brockton.

Accordingly, I approve the Governing Committee's June 4, 2003 ruling on this matter.

SO ORDERED.

DATE: 08/05/04

/s/
Susan H. Unger, Esq.
Presiding Officer

This decision may be appealed to the Commissioner, pursuant to G.L. c. 26, §7.